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Attorney for Plaintiff
HERMINIA LORENZO CRUZ

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

HERMINIA LORENZO CRUZ,

Plaintiff,

v.

INTERNATIONAL COLLECTION
CORPORATION, a California corporation,
and CHARLES D. HENDRICKSON,
individually and in his official capacity,

Defendants.

Case No. C08-00991-JF-RS

**JOINT CASE MANAGEMENT
STATEMENT AND FEDERAL RULE
OF CIVIL PROCEDURE 26(f)
DISCOVERY PLAN**

Date: June 20, 2008
Time: 10:30 a.m.
Judge: Honorable Jeremy Fogel
Courtroom: 3, 5th Floor
Place: 280 South First Street
San Jose, California

The parties in the above-entitled action hereby submit this Joint Case Management Statement and Federal Rule of Civil Procedure 26(f) Discovery Plan for the initial case management conference to be conducted in this matter on June 20, 2008, at 10:30 a.m. The parties jointly request that the Court enter a Case Management Order in this case, based on the parties discovery plan outlined in this document, without a Case Management Conference.

1. Jurisdiction and Service

The basis for the Court's subject matter jurisdiction is federal question jurisdiction. No parties remain to be served.

2. Statement of Facts

a. Plaintiff's Statement

This case is brought by an individual consumer to address Defendants' violations of the Fair

Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”). The violations stem from Defendants’ communications attempting to collect a consumer debt from Plaintiff. Correspondence between the parties has been attached to the Complaint as exhibits.

Generally, Plaintiff is a consumer who owes a financial obligation which was assigned or otherwise transferred to Defendants for collection from Plaintiff. Thereafter, Defendants began a debt collection campaign using collection letters. After receiving Defendants’ initial collection letter, Plaintiff sent a letter to Defendants disputing the debt and refusing to pay the debt. Defendants, after receiving Plaintiff’s letter disputing the debt, continued to communicate with Plaintiff in an attempt to collect the debt through the use of collection letters sent to Plaintiff. Plaintiff sent a second letter disputing the debt to Defendants, yet Defendants continued to send collection letters to Plaintiff. The subsequent collection letters threatened Plaintiff with “treble damages,” and being reported to the consumer credit reporting agencies. Defendant’s letters finally stopped when Plaintiff’s counsel sent a letter to Defendants notifying Defendants that Plaintiff was represented by counsel.

b. Defendants’ Statement

Defendants deny that they violated any statute.

3. Legal Issues

The principal legal issues which the parties dispute:

1. Whether Defendants continued to communicate with Plaintiff in an attempt to collect the debt after receiving a written notification that Plaintiff refused to pay the debt being collected, in violation of 15 U.S.C. § 1692c(c);
2. Whether Defendants misrepresented the character, amount or legal status of the debt, in violation of 15 U.S.C. § 1692e(2)(A);
3. Whether Defendants misrepresented the compensation which may be lawfully received by Defendants for the collection of the debt, in violation of 15 U.S.C. § 1692e(2)(B);
4. Whether Defendants attempted or threatened to collect treble damages from Plaintiff pursuant to Cal. Civil Code § 1719, an action that cannot legally be

1 taken or that was not intended to be taken, in violation of 15 U.S.C.
2 §1692e(5);

3 5. Whether Defendants attempted or threatened to collect interest in addition to
4 a check fee from Plaintiff, an action that cannot legally be taken or that was
5 not intended to be taken, in violation of 15 U.S.C. § 1692e(5);

6 6. Whether Defendants attempted or threatened to collect attorney fees from
7 Plaintiff, an action that cannot legally be taken or that was not intended to be
8 taken, in violation of 15 U.S.C. § 1692e(5);

9 7. Whether Defendants communicated or threatened to communicate credit
10 information regarding the debt, which was known by Defendants to be false,
11 to a consumer reporting agency, in violation of 15 U.S.C. § 1692e(8);

12 8. Whether Defendants falsely represented that Defendants were lawfully
13 entitled to interest in addition to a check fee, in violation of 15 U.S.C. §§
14 1692e and 1692e(10);

15 9. Whether Defendants falsely represented that Defendants were lawfully
16 entitled to attorney's fees, in violation of 15 U.S.C. §§ 1692e and 1692e(10);

17 10. Whether Defendants falsely represented that Defendants were entitled to
18 collect treble damages from Plaintiff pursuant to Cal. Civil Code § 1719, in
19 violation of 15 U.S.C. §§ 1692e and 1692e(10);

20 11. Whether Defendants used false representations or deceptive means to collect
21 or attempt to collect a debt, in violation of 15 U.S.C. §§ 1692e and
22 1692e(10);

23 12. Whether Defendants attempted or threatened to collect interest, fees or other
24 charges from Plaintiff that are not expressly authorized by the agreement
25 creating the debt or otherwise permitted by law, in violation of 15 U.S.C. §
26 1692f(1);

27 13. Whether Defendants intentionally caused harm to Plaintiff's emotional well
28 being by engaging in highly offensive conduct in the course of collecting the

debt thereby invading and intruding upon Plaintiff's right to privacy, solitude and seclusion;

14. Whether Defendants' negligent failure to conform collection activities to the standard of conduct set forth in the FDCPA was the proximate or legal cause of the resulting injuries to Plaintiff;

15. Whether Defendants violated a statutory duty to Plaintiff as set forth in the FDCPA, and is thereby liable for Plaintiff's damages under the doctrine "tort-in se"; and

16. Whether Defendants acted with malice, oppression of fraud.

4. Motions

Defendants have filed a Motion to Dismiss the Complaint. Plaintiff has filed an Opposition. The matter was taken under submission on May 2, 2008.

Plaintiff will likely file a motion or motions for summary judgment or partial summary judgment.

5. Amendment of Pleadings

Each party may file an amended pleading without further stipulation.

6. Evidence Preservation

Plaintiff will propose a protective order to govern production of confidential material in the litigation.

Defendants have directed its relevant employees to preserve all documents, in paper or electronic form, related to the subject matter in this case.

7. Disclosures

a. Plaintiff's Statement

Plaintiff served formal written disclosures on June 3, 2008, as required by Fed. R. Civ. P. 26(a)(1).

b. Defendants' Statement

The Defendants have no additional documents to disclose at this time.

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1 **8. Discovery**

2 **Plaintiff's Discovery:** Plaintiff will serve Interrogatories, Requests for Production of
3 Documents and Requests for Admission shortly. At this time and without the benefit of Defendants'
4 initial disclosures, Plaintiff anticipates that she may require up to 10 depositions in this matter.

5 **Defendants' Discovery:**

6 Defendant will serve Interrogatories, Requests for Production of Documents, Requests for
7 Admissions and may depose the Plaintiff.

8 **9. Class Actions**

9 This case is not a class action. Plaintiff reserves the right to seek leave of the Court to file
10 an amended Complaint containing class allegations.

11 **10. Related Cases**

12 The parties are not aware of any related cases at this time.

13 **11. Relief**

14 **a. Plaintiff's Statement**

15 Plaintiff requests that this Court:

- 16 a. Declare that Defendants violated the Fair Debt Collection Practices Act, 15
17 U.S.C. §§ 1692c(c), 1692e, 1692e(2)(A), 1692e(2)(B), 1692e(5), 1692e(8),
18 1692e(10) and 1692f(1);
- 19 b. Award Plaintiff her actual damages in an amount to be determined at trial,
20 pursuant to 15 U.S.C. § 1692k(a)(1);
- 21 c. Award Plaintiff statutory damages in an amount not exceeding \$1,000,
22 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 23 d. Award Plaintiff her actual damages and punitive damages in an amount to be
24 determined at trial for Defendants' invasions of Plaintiff's privacy;
- 25 e. Award Plaintiff her actual damages and punitive damages in an amount to be
26 determined at trial for Defendants' negligent collection practices;
- 27 f. Award Plaintiff her actual damages and punitive damages in an amount to be
28 determined at trial under the doctrine of "tort-in-se";

g. Award Plaintiff the costs of this action and reasonable attorneys fees,
pursuant to 15 U.S.C. § 1692k(a)(3);

h. Award Plaintiff treble damages pursuant to Cal. Civil Code § 3345; and

i. Award Plaintiff such other and further relief as may be just and proper.

b. Defendants' Statement

12. Settlement and ADR

The Parties have selected Mediation as their ADR Process.

13. Consent to Magistrate Judge for All Purposes

Parties have not consented to proceed before a Magistrate Judge for all purposes.

14. Other References

None at this time.

15. Narrowing of Issues

The Parties anticipate that resolution of motions may narrow the issues for determination.

16. Expedited Schedule

The parties do not believe that an expedited schedule is necessary.

17. Scheduling

Initial Case Management Conference	June 20, 2008
Close of Fact Discovery	December 31, 2008
Fed. R. Civ. P. 26(a)(3) Disclosures	January 14, 2009
Last Day to File Dispositive Motions	February 4, 2009
Opposition to Dispositive Motions	February 18, 2009
Replies to Dispositive Motions	February 25, 2009
Hearing on Dispositive Motions	March 20, 2009, at 9:00 a.m.
Final Pre-Trial Conference	March 27, 2009, at 11:00 a.m.
Trial	April 17, 2009, at 1:30 a.m.

18. Trial

The parties anticipate that the action can be ready for trial in April 2009.

Estimated length of trial is 2-3 days.

19. Disclosure of Non-Party Interested Entities or Persons

a. Plaintiff's Statement

Pursuant to Civil L.R. 3-16, Plaintiff states, on information and belief, that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- i. Herminia Lorenzo Cruz, an individual residing in San Jose, California.

b. Defendants' Statement

Pursuant to Civil L.R. 3-16, Defendants state, on information and belief, that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- i. INTERNATIONAL COLLECTION CORPORATION, a California corporation, CHARLES D. HENDRICKSON, an individual.

20. Other Matters

None at this time.

Dated: June 3, 2008

/s/ Fred W. Schwinn

Fred W. Schwinn, Esq.
Attorney for Plaintiff
HERMINIA LORENZO CRUZ

Dated: June 3, 2008

/s/ Larry Rothman

Larry Rothman, Esq.
Attorney for Defendants
INTERNATIONAL COLLECTION
CORPORATION, and CHARLES
D. HENDRICKSON